

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on January 27, 2003 at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Hal Jacobson (D)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)

Members Excused: None.

Members Absent: Rep. Tim Dowell (D)
Rep. Daniel Fuchs (R)
Rep. Jeff Laszloffy (R)
Rep. Jim Shockley (R)

Note: Absent members arrived after the roll was called.
Rep. Brown left prior to the roll call vote.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 373, 1/20/2003
Executive Action: HB 266; HB 27; HJ 11

HEARING ON HB 373

Sponsor: REPRESENTATIVE ALAN OLSON, HD 8, ROUNDUP

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 2.6 - 6}

REP. OLSON said that, in the late 1970's, Montana amended the Reclamation Act in an attempt to incorporate provisions of their original Reclamation Act. Mining companies were required to put up bonds to cover the costs of reclamation. Now, 25 years later, there is still reclaimed land still under bonds held by DEQ (Department of Environmental Quality). The land is not exactly as it was prior to mining, and thus, does not meet the criteria for bond release. HB 373 removes the allowance for subjectivity in returning the land to exactly as it was prior to mining. The bill allows for the land to be returned to a land-use standard of as good, or better, than it was prior to mining. The Colstrip area is an example of how the utility company has done a good job of reclamation in acre after acre of land. HB 373 does not allow coal companies to escape their liability to return land to as good, or better, condition as pre-mining. This bill provides for clear and understandable standards for success.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6 - 28.1}

David Simpson, Montana Coal Council, provided a copy of his testimony. He also distributed a pamphlet, "A Land Reborn."

EXHIBIT(feh17a01)

EXHIBIT(feh17a02)

Pat Campbell, Operating Engineers, Local #400, said that he supports HB 373. It will provide for mining that is environmentally sound. If we don't help the coal companies, there won't be any coal companies.

Jim Mockler, Montana Coal Council, said that he was in support of HB 373.

Tom Harrison, Spring Creek Coal, said that this matter has been pending since 1973. It seems that the principal of the law is that all things end sometime. He said that as a lawyer, he sees without this bill, there is potential litigation that will never

end. This bill would allow for some finite time lines to get things done which is in the public interest.

Dave Allen, Western Environmental Trade Association, said that this is an important step and hopes the committee will recommend a do pass.

Hugh Broadus, Rancher, Colstrip area, said that about 6,000 acres of his land has been used for coal mining with the understanding that he would receive his land back in a reasonable time. This was nearly 22 years ago, and not one acre has been returned. He said that although it is not going to be perfect, some of the reclaimed land is better. He said that he now has water lines where there were none before. The land needs to be reverted back to the original landowners.

William Duffield, Montana Association of Oil, Gas and Coal Counties, said that he supports HB 373. He indicated that it is time that the land is returned back to the land owners.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 28.1 - Tape: 1; Side: B; 21.2}

Doug McRae, Rancher, Colstrip, provided a written copy of his testimony.

EXHIBIT (feh17a03)

Ellen Pfister, Northern Plains Resource Council, provided a written copy of her testimony.

EXHIBIT (feh17a04)

Jeff Barber, Montana Environmental Information Center, said that the goal of reclamation is not necessarily to erase the companies' bonds. He distributed a copy of a memo from Neil Harrington, Bureau Chief, Industrial and Energy Minerals Bureau, DEQ to the Director of DEQ. He also distributed written information contained in his testimony.

EXHIBIT (feh17a05)

EXHIBIT (feh17a06)

Note: CHAIRMAN BITNEY allowed the insertion of an informational witness to accommodate her schedule.

Informational Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 21.2 - 23.6}

REP. MONICA LINDEEN, HD 7, said that this problem is similar to the bills in 1999 regarding eminent domain. She indicated that the committee may want to do what was done with the eminent domain issue. A committee was formed to do a study regarding a resolution to the problem. It worked well for them and she offered that the committee may want to do a similar study for the problems addressed in HB 373.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 23.6 - Tape: 2; Side A; 15.4}

Jeanne Charter, Bull Mountain Landowners Association, provided a written copy of her testimony.

EXHIBIT(feh17a07)

Steve Gilbert, Helena, said that over 30 years he has been a consulting biologist in Montana, Idaho, South Dakota, parts of the northwest. The citizens of Montana end up paying for the effects of long-term mining. He said that the committee go slowly in considering this bill.

Cody Ferguson, Northern Plains Resource Council, distributed the testimony that was originally going to be presented by Nick Golder, Forsyth, Montana, who was unable to attend.

EXHIBIT(feh17a08)

Larry Kralj, Great Falls, Environmental Ranger's testimony was typed per request of Sargent of Arms. Entered as Exhibit 9.

Ric Valois, Great Falls, Environmental Ranger's testimony was typed per request of Sargent of Arms. Entered as Exhibit 9.

EXHIBIT(feh17a09)

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 15.4 - 17.8}

Steve Welch, Department of Environmental Quality, provided a copy of his testimony.

EXHIBIT(feh17a10)

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 17.8 - Tape: 2; Side: B; 17.1}

REP. BROWN asked Mr. Broadus if the rules that he termed ridiculous were the same rules that Mr. Welch just talked about.

Mr. Broadus said that the DEQ make all the decisions. The mine company and landowner don't have input into the decisions made by DEQ.

REP. BROWN asked if it would help if the landowner and mining company made these decisions in conjunction with the DEQ.

Mr. Broadus said that he thinks that it would be a mediator or a board that would sit between the coal company and DEQ.

REP. BROWN asked Ms. Pfister asked what projects have Northern Plains been in support of in the area of resource development.

Ms. Pfister talked about primacy programs and didn't really answer the question posed by REP. BROWN.

REP. BROWN again asked about specific projects.

Ms. Pfister said that there is a "good neighbor agreement" between the Stillwater Line and local people.

REP. JACOBSON asked Steve Welch if, in his professional opinion, this particular piece of legislation is needed.

Mr. Welch said that there are some areas that are cumbersome and this bill could result in streamlining them.

REP. JACOBSON asked if Mr. Welch was involved with the study referred to by REP. LINDEEN and if it would be appropriate for this bill.

Mr. Welch said that he was not involved but that they would certainly be willing to participate in such a study.

REP. PARKER asked if the proposed definition of the word "reclamation" would lessen the obligation of the coal companies under Montana law. He asked if, by reclaiming the land, the new

definition would allow for some form of an economic project to be placed on top of a site.

Mr. Welch said that it would certainly modify the law. The current law has an emphasis on wildlife habitat. This bill would allow the freedom to propose alternate uses of the land.

REP. PARKER asked if Mr. Welch was concerned that the statutory change of striking the language, "under a plan approved by the department," might undermine the department's authority.

Mr. Welch said that he felt there were other places in the statute that would provide that authority.

REP. RICE asked if there have been any bond releases.

Neil Harrington, Bureau Chief, Industrial and Energy Minerals Bureau, DEQ, said that there have been very few applications for bond releases. Phases one and two in Colstrip have had bond releases.

REP. MENDENHALL asked Mr. Simpson how Montana compares to other states in this matter.

Mr. Simpson said that he was personally familiar with programs in Texas and North Dakota. In North Dakota, an application for a mining permit takes about 18 months. The last one that they did in Montana took nearly four years. North Dakota takes a land approach to reclamation consistent with what is proposed in this bill. In Texas that cannot receive a bond release for ten years to demonstrate environmental stability.

REP. MENDENHALL asked Mr. Simpson if HB 373 would make stiff reclamation voluntary.

Mr. Simpson said that he did not agree with that. The bill would allow for an alternate use of the land.

REP. MENDENHALL asked Mr. Simpson if abandonment would be considered a higher or better use of the land.

Mr. Simpson said that abandonment is not being proposed, but will provide an ending point for reclamation. They are struggling to define qualitative characteristics to quantitative terms.

REP. MENDENHALL asked Mr. Welch the same question regarding abandoning the land.

Mr. Welch said, "No".

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 17.1 - 23}

REP. OLSON said that the DEQ does a good job with the tools that they have. They are caught between two opposing parties but he sees this legislation giving them tools to get something done. He distributed a copy of the bill with margin notes. This bill is strictly common sense. This could lead to additional development. He said that there has been no bond releases for phase three or four projects since the 1970's. This bill is good for everybody involved.

EXHIBIT (feh17a11)

A letter from the Public Service Commission was distributed prior to the hearing on HB 373, but was not discusses.

EXHIBIT (feh17a12)

EXECUTIVE ACTION ON HB 266

{Tape: 2; Side: B; Approx. Time Counter: 23 - Tape: 3; Side: A; 8.7}

Motion: **REP. MATTHEWS** moved that **HB 266 DO PASS.**

Discussion:

REP. OLSON said that he agreed with the proponents, but was concerned about the removal of allocation of funds to the Montana School for the Deaf and Blind. It is going to cost the school funding.

REP. JACOBSON said that it is important to note that the \$57,000 funding was a one-time appropriation predicated on the idea that the money was to be used for hearing screening equipment under the proviso under the MTAP program. Since then, the money has been spent for that purpose. There is no further need for infant hearing screening equipment.

REP. PARKER said that the \$57,000 was allocated to the school in the Governor's original executive budget. He said that he would have to oppose the bill at present with hopes to recapture the money somewhere else.

REP. JACOBSON said that the money channeled from the MTAP to those people with hearing impairments are money that go to people who are older. Many of the recipients are over the age of 65 and on limited income.

REP. MENDENHALL said that his problem with the bill is the increased 150% of the federal poverty level that is added. He said that he would be more comfortable if it were a lower increment.

REP. DOWELL asked **REP. JACOBSON** if the money could disappear.

REP. JACOBSON said that was spent as a result of action by the special session of 2002 was money diverted from the MTAP program to the School for the Deaf and Blind specifically to purchase infant hearing screening equipment. They have purchased the necessary equipment for the school.

REP. CARNEY said that the MTAP funds were originally intended for hearing service for telephones and was diverted by the 2002 special session. She said that we need to get back to using the money for which it was originally intended.

REP. MATTHEWS said he was going to vote for this as it is a very good program.

Vote: Motion carried 10-2 with **REP. OLSON AND REP. PARKER** voting no. **REP. BROWN** and **REP. FUCHS** were not present for the vote.

EXECUTIVE ACTION ON HB 27

{Tape: 3; Side: A; Approx. Time Counter: 8.7 - 20.6}

Motion: **REP. CARNEY** moved that **HB 27 DO PASS**.

Discussion:

REP. CARNEY said that there may be an amendment changing "American Indian" to "Native American."

CHAIRMAN BITNEY indicated that he had spoke to the sponsor and got the impression that it was not significant.

REP. MATTHEWS said that he has an opportunity to supervise many of these programs. He feels that putting this into statute, it would be a problem.

REP. SHOCKLEY asked **REP. MATTHEWS** if the problem was that there wasn't anyone available to meet the requirements.

REP. MATTHEWS said that there is someone who comes from the Crow Reservation about twice a month to conduct sweats. He doubts that this person is willing to travel throughout the state to conduct these programs.

A voice vote was taken but it was unclear what was the result.

REP. LASZLOFFY requested that there be a roll call vote.

Vote: Motion failed 7 - 7 with **REPRESENTATIVES FUCHS, LASZLOFFY, MATTHEWS, MENDENHALL, OLSON, and RICE** voting no. **REP. BROWN** voted no by proxy.

Motion/Vote: Motion to table carried 8-6 with **REPRESENTATIVES BITNEY, CARNEY, DOWELL, JACOBSON, PARKER, and RYAN** voting no. **REP. BROWN** voted yes by proxy.

EXECUTIVE ACTION ON HJ 11

{Tape: 3; Side: A; Approx. Time Counter: 20.6 - 21.6}

Motion/Vote: **REP. PARKER** moved that **HJ 11 DO PASS**. Motion carried 11-3 with **REPRESENTATIVES MENDENHALL, and OLSON** voting no and **REP. BROWN** voting no by proxy.

ADJOURNMENT

Adjournment: 5:15 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT (feh17aad)